paragraph (e)(2)(vi) of this section) of $5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of $5,000 a year, payable annually at the end of each year, be paid to W, his widow, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is $33,877 ($5,000×6.7754), as determined pursuant to § 20.2031–7A(c) and by the use of factors involving one life and a term of years as published in Publication 723A (12–70). The fair market value of the charitable annuity is $36,800.50 ($5,000×7.3601), as determined under Table B in § 20.2031–7A(d). It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the widow and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction with respect to the charitable annuity will be limited to $31,123 ($65,000 less $33,877 [the value of the private annuity]), which is the minimum amount it is evident the charity will receive.

Example (4). In 1975, E dies bequeathing $75,000 in trust with the requirement that an annuity of $5,000 a year, payable annually at the end of each year, be paid to B, an individual, for a period of 5 years and thereafter an annuity of $5,000 a year, payable annually at the end of each year, be paid to M Charity for a period of 5 years. The remainder is to be paid to C, an individual. No deduction is allowed under section 2055(a) with respect to the charitable annuity because it is not a ''guaranteed annuity interest'' within the meaning of paragraph (e)(2)(vi)*(f)* of this section.

(v) The present value of a unitrust interest described in paragraph (e)(2)(vii) of this section is to be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

(3) *Certain decedents dying before August 1, 1969.* In the case of decedents dying before August 1, 1969, the present value of an interest described in subparagraph (2) of this paragraph is to be determined under § 20.2031–7 except that, if the interest is an annuity issued by a company regularly engaged in the sale of annuities, the present value is to be determined under § 20.2031–8.

(4) *Other decedents.* The present value of an interest not described in paragraph (f)(2) of this section is to be determined under § 20.2031–7(d) in the case of decedents where the valuation date of the gross estate is after April 30, 1999, or under § 20.2031–7A in the case of decedents where the valuation date of the gross estate is before May 1, 1999.

(5) *Special computations.* If the interest transferred is such that its present value is to be determined by a special computation, a request for a special factor, accompanied by a statement of the date of birth and sex of each individual the duration of whose life may affect the value of the interest, and by copies of the relevant instruments, may be submitted by the fiduciary to the Commissioner who may, if conditions permit, supply the factor requested. If the Commissioner furnishes the factor, a copy of the letter supplying the factor must be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in this paragraph.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7318, 39 FR 25453, July 11, 1974, 39 FR 26154, July 17, 1974; T.D. 7340, 40 FR 1240, Jan. 7, 1975; T.D. 7955, 49 FR 19995, May 11, 1984; T.D. 7957, 49 FR 20811, May 17, 1984; T.D. 8069, 51 FR 1507, Jan. 14, 1986; 51 FR 5323, Feb. 13, 1986; T.D. 8095, 51 FR 28368, Aug. 7, 1986; 51 FR 32071, Sept. 9, 1986; T.D 8540, 59 FR 30103, 30170, June 10, 1994; T.D. 8819, 64 FR 23222, 23229, Apr. 30, 1999; 64 FR 33196, June 22, 1999; T.D. 8886, 65 FR 36943, June 12, 2000; T.D. 8923, 66 FR 1042, Jan. 5, 2001]

§ 20.2055–3 Effect of death taxes and administration expenses.

(a) *Death taxes*—(1) If under the terms of the will or other governing instruments, the law of the jurisdiction under which the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax, or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any property the transfer of which would otherwise be allowable as a deduction under section 2055, section 2055(c) provides that the sum deductible is the amount of the transferred property reduced by the

amount of the tax. Section 2055(c) in effect provides that the deduction is based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. Thus, if $50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of $5,000, payable out of the $50,000, the amount deductible is $45,000. If a life estate is bequeathed to an individual with remainder over to a charitable organization, and by the local law the inheritance tax upon the life estate is paid out of the corpus with the result that the charitable organization will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present value, as of the date of the testator's death, of the remainder of the fund so reduced. If a testator bequeaths his residuary estate, or a portion of it, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies upon which they were imposed, shall be payable out of the residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will. If a residuary estate, or a portion of it, is bequested to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The return should fully disclose the computation of the amount to be deducted. If the amount to be deducted is dependent upon the amount of any death tax which has not been paid before the filing of the return, there should be submitted with the return a computation of that tax.

(2) It should be noted that if the Federal estate tax is payable out of a charitable transfer so that the amount of the transfer otherwise passing to charity is reduced by the amount of the tax, the resultant decrease in the amount passing to charity will further reduce the allowable deduction. In such a case, the amount of the charitable deduction can be obtained only by a series of trial-and-error computations, or by a formula. If, in addition, interdependent State and Federal taxes are involved, the computation becomes highly complicated. Examples of methods of computation of the charitable deduction and the marital deduction (with which similar problems are encountered) in various situations are contained in supplemental instructions to the estate tax return.

(3) For the allowance of a deduction to a decedent's estate for certain State death taxes imposed upon charitable transfers, see section 2053(d) and § 20.2053–9.

(b) *Administration expenses*—(1) *Definitions*—(i) *Management expenses.* Estate management expenses are expenses that are incurred in connection with the investment of estate assets or with their preservation or maintenance during a reasonable period of administration. Examples of these expenses could include investment advisory fees, stock brokerage commissions, custodial fees, and interest.

(ii) *Transmission expenses.* Estate transmission expenses are expenses that would not have been incurred but for the decedent's death and the consequent necessity of collecting the decedent's assets, paying the decedent's debts and death taxes, and distributing the decedent's property to those who are entitled to receive it. Estate transmission expenses include any administration expense that is not a management expense. Examples of these expenses could include executor commissions and attorney fees (except to the extent of commissions or fees specifically related to investment, preservation, or maintenance of the assets), probate fees, expenses incurred in construction proceedings and defending against will contests, and appraisal fees.

(iii) *Charitable share.* The charitable share is the property or interest in property that passed from the decedent for which a deduction is allowable under section 2055(a) with respect to all or part of the property interest. The charitable share includes, for example, bequests to charitable organizations and bequests to a charitable lead unitrust or annuity trust, a charitable remainder unitrust or annuity trust, and a pooled income fund, described in section 2055(e)(2). The charitable share also includes the income produced by the property or interest in property

during the period of administration if the income, under the terms of the governing instrument or applicable local law, is payable to the charitable organization or is to be added to the principal of the property interest passing in whole or in part to the charitable organization.

(2) *Effect of transmission expenses.* For purposes of determining the charitable deduction, the value of the charitable share shall be reduced by the amount of the estate transmission expenses paid from the charitable share.

(3) *Effect of management expenses attributable to the charitable share.* For purposes of determining the charitable deduction, the value of the charitable share shall not be reduced by the amount of the estate management expenses attributable to and paid from the charitable share. Pursuant to section 2056(b)(9), however, the amount of the allowable charitable deduction shall be reduced by the amount of any such management expenses that are deducted under section 2053 on the decedent's federal estate tax return.

(4) *Effect of management expenses not attributable to the charitable share.* For purposes of determining the charitable deduction, the value of the charitable share shall be reduced by the amount of the estate management expenses paid from the charitable share but attributable to a property interest not included in the charitable share.

(5) *Example.* The following example illustrates the application of this paragraph (b):

Example. The decedent, who dies in 2000, leaves his residuary estate, after the payment of debts, expenses, and estate taxes, to a charitable remainder unitrust that satisfies the requirements of section 664(d). During the period of administration, the estate incurs estate transmission expenses of $400,000. The residue of the estate (the charitable share) must be reduced by the $400,000 of transmission expenses and by the Federal and State estate taxes before the present value of the remainder interest passing to charity can be determined in accordance with the provisions of §1.664–4 of this chapter. Because the estate taxes are payable out of the residue, the computation of the estate taxes and the allowable charitable deduction are interrelated. See paragraph (a)(2) of this section.

(6) *Cross reference.* See §20.2056(b)–4(d) for additional examples applicable to the treatment of administration expenses under this paragraph (b).

(7) *Effective date.* The provisions of this paragraph (b) apply to estates of decedents dying on or after December 3, 1999.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8846, 64 FR 67764, Dec. 3, 1999; 64 FR 71022, Dec. 20, 1999]

§ 20.2055–4 Disallowance of charitable, etc., deductions because of "prohibited transactions" in the case of decedents dying before January 1, 1970.

(a) Sections 503(e) and 681(b)(5) provides that no deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent during his lifetime or by will for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals) is allowed if (1) the transfer is made in trust, and, for income tax purposes for the taxable year of the trust in which the transfer is made, the deduction otherwise allowable to the trust under section 642(c) is limited by section 681(b)(1) by reason of the trust having engaged in a prohibited transaction described in section 681(b)(2), or (2) the transfer is made to a corporation, community chest, fund or foundation which, for its taxable year in which the transfer is made, is not exempt from income tax under section 501(a) by reason of having engaged in a prohibited transaction described in section 503(c).

(b) For purposes of section 681(b)(5) and section 503(e), the term ''transfer'' includes any gift, contribution, bequest, devise, legacy, or other disposition. In applying such sections for estate tax purposes, a transfer, whether made during the decedent's lifetime or by will, is considered as having been made at the moment of the decedent's death.

(c) The income tax regulations contain the rules for the determination of the taxable year of the trust for which the deduction under section 642(c) is